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Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization
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Strengthening of the role of the Organization and enhancing its effectiveness

Further revised working paper submitted by the Cuban delegation

Proposal submitted by the delegation of Cuba to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

In accordance with its mandate as set forth in General Assembly resolution 3499 (XXX), of 15 December 1975, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization must be directly involved in the restructuring exercise that is being conducted in the United Nations in response to the growing recognition of the need for a comprehensive reform of the principal organs of the Organization.

The necessity of achieving the delicate balance envisaged in the Charter between the roles of all the principal organs, and, in particular, between the role of the General Assembly and that of the Security Council, and the necessity of reforming the Security Council by making it more representative, more transparent and more democratic in its operations, impose on the Special Committee specific tasks in fulfilment of its mandate.

These tasks are increasingly dictated by the persistence of international tensions that threaten international peace and security; the need for the full application of the principles of sovereign equality and equitable geographical representation based on the Organization's universal nature; the increase in the membership of the Organization; and the recognition that the United Nations remains a preferred alternative for Member States.

The political will on the part of States to comply with the instruments and treaties adopted by the Organization is also a necessary foundation for genuine and lasting peace.

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Accordingly, the Special Committee has the important task of contributing actively to the efforts under way in the various open-ended working groups of the General Assembly by providing a legal analysis, from a juridical perspective, of fundamental issues involved in the reform process, including:

The role of the General Assembly in the maintenance of international peace and security.

On the basis of the foregoing, the Special Committee should perform the following tasks:

(a) Conduct a study of a legal nature on the implementation of Chapter IV of the Charter, specifically its Articles 10, 11, 12, 13 and 14 dealing with the functions and powers of the General Assembly;

(b) Study, in the light of the reform process, the validity in the present circumstances of the general exception contained in Article 12, paragraph 1, of the Charter with respect to recommendations by the General Assembly regarding a dispute which is being dealt with by the Security Council in the exercise of the functions assigned to it under the Charter, and the relationship between that paragraph and Articles 10, 11, 13 and 14.

As demonstrated by the recent resumption of the tenth special session of the General Assembly, the objective of analysis of a question by the Assembly is not to hinder but to support the efforts of the Security Council. It is not a matter of stripping the Security Council of its fundamental role in the maintenance of international peace and security, but of supporting it in the exercise of its functions.

A number of examples may be cited to show that the General Assembly has broad prerogatives and powers, and that many of those broad powers have never been used or fully employed.

Article 10 of the Charter authorizes the General Assembly to "discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter".

The Charter does not confer such authority on any other organ, and that authority should be actively employed.

Article 12, paragraph 1, of the Charter provides that the General Assembly shall not make any recommendations with regard to a dispute or situation before the Security Council.

This provision does not prevent the General Assembly from discussing any question or dispute or situation that is being considered by the Security Council, and does not exclude the possibility that a majority of the Member States may express their opinions on questions before the Council.

Article 11, paragraph 2, provides that "the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council".

The question may be discussed, but it is possible to make recommendations only if the Security Council is not discharging its functions with regard to the dispute or situation.

Articles 13 and 14 indicate the purposes of the recommendations that the General Assembly may make.

The Security Council must act in consonance with the purposes and principles of the United Nations. Foremost among them is to maintain international peace and security, and to that end to take effective collective measures to avert and eliminate threats to peace and to resolve other breaches of the peace.

The Security Council must discharge its primary responsibility under Article 24 of the Charter, and all its permanent members must seek to achieve unanimity among themselves for the purpose of taking action in the event of a situation which threatens international peace and security.

If the Members of the Organization judge or consider that the Council is not ready to act in accordance with the purposes and principle of the Organization, such a conclusion may ease the procedural restriction contained in Article 12, paragraph 1, of the Charter, and allow decisions of the Security Council to genuinely reflect the will of the majority of the Members of the Organization.

If the Security Council, owing to a lack of unanimity among its permanent members, ceases to discharge its primary responsibility for the maintenance of international peace and security in any situation in which there is a threat to peace, a breach of the peace or an act of aggression, the General Assembly should immediately consider the question with a view to making appropriate recommendations to the members for the adoption of collective measures.

The Special Committee on the Role of the Charter should play a more active role, from a legal viewpoint, in disputes, as indicated above, in which the Members of the United Nations might contribute to the maintenance of international peace and security.

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization could conduct the study proposed above, either acting directly or by creating ad hoc subsidiary bodies.

The Special Committee on the Charter could analyse the following recommendations:

> While the General Assembly may not make recommendations on a matter before the Security Council, it can discuss any question, dispute, or situation on the Council's agenda;
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> If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to members for collective measures;[1]

[1] General Assembly resolution 377 (V), "Uniting for peace", adopted in 1950, provides that: "... if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to members for collective measures, including in the case of a breach of the

The Assembly, if not in session, may meet in emergency special session within twenty-four hours of the request therefor;

The emergency special session may be convened at the request of the Security Council or the majority of the Members of the United Nations;

The Special Committee on the Charter could assist in determining what is meant by the phrase, in Article 12, paragraph 1, "is exercising in respect of any dispute or situation the functions".[2]

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peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor".

[2] Statement made by the Legal Counsel at the 1637th meeting of the Third Committee on 12 December 1968: "Article 10 of the Charter of the United Nations provides that the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council on any such questions or matters. Article 12 provides that while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. Nevertheless, the Assembly has interpreted the words, 'is exercising' as meaning 'is exercising at this moment'; consequently it has made recommendations on other matters which the Security Council was also considering ...".